

1985

# Safeco Insurance Company of America v. Rebecca Larsen v. Gerald Horton: Brief of Respondent

Utah Supreme Court

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## Recommended Citation

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DOCKET NO.

1985

20833

IN THE SUPREME COURT OF THE STATE OF UTAH

SAFECO INSURANCE COMPANY  
OF AMERICA,

Plaintiff and Respondent,

vs.

REBECCA LARSEN,

Defendant and Respondent,

vs.

GERALD HORTON,

Applicant for Intervention  
and Appellant.

Supreme Court No. 20833

BRIEF OF RESPONDENT  
SAFECO INSURANCE COMPANY OF AMERICA

Appeal from an Order of the Third Judicial  
District Court of Salt Lake County, Utah

Honorable Homer F. Wilkinson

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DEC 10 1985

Clerk, Supreme Court, Utah

SAFECO INSURANCE COMPANY  
OF AMERICA,

**VS.**

Supreme Court No. 20833

**VS.**

Applicant for Intervention  
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**IN THE SUPREME COURT OF THE STATE OF UTAH**

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SAFECO INSURANCE COMPANY OF AMERICA,	)	
	)	
Plaintiff and Respondent,	)	
vs.	)	
REBECCA LARSEN,	)	Supreme Court No. 20833
	)	
Defendant and Respondent,	)	
vs.	)	
GERALD HORTON,	)	
	)	
Applicant for Intervention and Appellant.	)	

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**BRIEF OF RESPONDENT  
SAFECO INSURANCE COMPANY OF AMERICA**

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**STATEMENT OF ISSUE PRESENTED FOR REVIEW**

The only issue presented on appeal is as follows: Is an injured person a proper party to a declaratory action to determine coverage under a liability insurance policy between an insurance company and one who may be covered under the policy?

**STATEMENT OF THE CASE**

**Nature of the Case**

This is a delaratory action by Safeco Insurance Company of America, hereinafter "Safeco," against Rebecca Larsen for determination that Safeco does not owe insurance coverage to Rebecca Larsen for claims asserted against her by Gerald Horton. Safeco's claim is based on the fact that at the time of the accident

between Rebecca Larsen and Gerald Horton, Rebecca Larsen was driving a vehicle owned and insured by Paul Lawrence and regularly furnished by him for Ms. Larsen's use. Gerald Horton filed a Motion to Intervene as a Defendant in the declaratory action initiated by Safeco.

### **Course of the Proceedings**

Gerald Horton's Motion to Intervene as a Defendant was heard by the Honorable Homer F. Wilkinson on June 21, 1985.

### **Disposition**

Judge Wilkinson denied the applicant's Motion to Intervene as a Defendant.

### **STATEMENT OF FACTS**

On July 11, 1984, Gerald Horton was injured in a collision between the motorcycle he was driving and an automobile driven by Rebecca Larsen. (R. 3, 15, 16, 24 and 35). The vehicle driven by Ms. Larsen, a 1979 Mustang, was owned by an individual named Paul Lawrence. (R. 3, 24, 28, 35 and 37). Mr. Lawrence's vehicle was covered with liability insurance under a policy issued by Prudential Property & Casualty Company, hereinafter "Prudential." (R. 36 and 42). The vehicle was furnished by Mr. Lawrence for Ms. Larsen's regular use. (R. 3, 24, 28 and 37).

Rebecca Larsen is the adult daughter of Melvin S. Larsen. (R. 25, 26 and 36). At the time of the accident, Safeco insured two automobiles owned by Melvin S. Larsen, a 1968 Oldsmobile and a 1963 Buick. (R. 3, 24 and 36).

Gerald Horton asserted a claim against Rebecca Larsen for his injuries suffered in the accident. (R. 3 and 30). Prudential, the insurance carrier providing coverage for the 1979 Mustang, admitted its obligation to defend Rebecca Larsen against Gerald Horton's claim. (R. 24, 25, 36 and 42).

Safeco, Melvin Larsen's automobile insurance carrier, was contacted concerning additional coverage for Rebecca Larsen for the claims asserted by Gerald Horton. (R. 24 and 25). Following an investigation, Safeco brought a declaratory action seeking a determination that its coverage did not apply to Rebecca Larsen with respect to any claims arising from the accident with Gerald Horton because the vehicle which she was driving at the time of the accident had been furnished for her regular use by Paul Lawrence and, therefore, was not within the coverage provided for "non-owned automobiles." (R. 1-4 and 28). Rebecca Larsen, in her Answer, agreed that no coverage was expected or existed for her under the terms of her father's insurance policy with respect to claims arising from the accident with Gerald Horton. (R. 24-29).

Gerald Horton filed a Motion to Intervene in the declaratory action initiated by Safeco. (R. 22-23). The Motion was denied based on applicable Utah law. (R. 52-54).

#### **SUMMARY OF ARGUMENT**

Under Utah law, it is established that an injured party has no legal interest in a contract for insurance between an insurance company and an insured, that there is no privity of contract between an injured party and the insurer of one alleged to have



caused the injuries and that the insured party is not a proper party to a lawsuit against an insurer of the party who caused or is claimed to have caused the injuries. Gerald Horton, therefore, is not a proper party to the declaratory action initiated by Safeco Insurance Company to determine coverage owed to Rebecca Larsen under a policy of insurance.

#### ARGUMENT

APPELLANT IS NOT A PROPER PARTY TO INTER-  
VENE IN THE DECLARATORY ACTION BETWEEN  
SAFECO INSURANCE COMPANY OF AMERICA AND  
REBECCA LARSEN.

The law in Utah is well established that an injured person is not a proper party to a declaratory action by an insurer to determine its liability under its contract of insurance with its insured. Utah Farm Bureau Insurance Company v. Chugg, 6 Utah 2d 399, 315 P.2d 277 (1957); Ammerman v. Farmers Insurance Exchange, 19 Utah 2d 261, 430 P.2d 576 (1967); Auerbach Company v. Key Security Police, Inc., 680 P.2d 740 (Utah 1984).

In Utah Farm Bureau Insurance Company v. Chugg, supra, the insurer of a driver involved in an accident brought a declaratory action against its insured and the other party to the accident who claimed to be injured by the acts of the insured. This Court noted that the injured party had not objected to his inclusion in the declaratory action, but if he had done so, his inclusion in the action was improper. The Court stated that the "transaction" involved in the declaratory action

is one between the insurer and the insured,  
namely their contract. Such contract can be  
construed without reference to any liability

having accrued thereunder. This being so, there is no issue of law or fact in common between the insurer and the plaintiff, or potential plaintiff, to a tort action against the insured. The tort victim has no present legal interest in the insurance contract. 6 Utah 2d at 406.

This principle is reiterated in other Utah cases. In the 1967 case of Ammerman v. Farmers Insurance Exchange, 19 Utah 2d 261, supra, an individual injured in an automobile accident recovered judgment in excess of the policy limits against an insured driver for injuries and damages resulting from the accident. He then sued the insured driver's insurance company to recover the balance of his judgment in addition to the policy limits which the company had already paid to him, basing his claim on the insurance company's failure to settle within policy limits. The court rejected a cause of action by the injured party against the other driver's insurance company, saying that the insurer had "no privity of contract with the injured individual" and "therefore owed him no duty, so there could be no breach thereof." 19 Utah 2d at 264.

In 1984, in the case of Auerbach Company v. Key Security Police, Inc., supra, this Court held that a judgment creditor could not sue the judgment debtor's insurer for wrongful denial of insurance coverage. In that case, Auerbach, the injured party, had obtained a default judgment against a security company for losses incurred during a robbery of the security company's employees while transporting Auerbach's money to a bank. In efforts to collect its judgment, Auerbach brought a garnishment

action against the security company's insurer, seeking to garnish the policy in an amount equal to its default judgment. Citing both Chugg and Ammerman, the Court stated that since the judgment creditor lacked privity with the insurer, it could not sue the insurer in its own right.

The holdings of this Court concerning the issue of legal actions between injured parties and insurers of those alleged to have caused the injuries are consistent. This Court has repeatedly held that an injured party has no legal interest in a contract for insurance between an insurance company and an insured, that there is no privity of contract between an injured party and the insurer of one claimed to have caused the injuries, and that the injured party is not a proper party to a lawsuit against the insurer of the party who caused or is claimed to have caused the injuries.

Appellant argues that the case of Lima v. Chambers, 657 P.2d 279 (Utah 1982), supports his claim for intervention in this declaratory action initiated by Safeco. In that case, an automobile liability insurance carrier providing uninsured motorist coverage sought to intervene in a tort action between its insured and the uninsured motorist tortfeasor. The trial court had denied intervention and this Court overruled its earlier decision and permitted intervention by the insurer.

The case of Lima v. Chambers is significantly different from the case currently before the Court. In Lima, the insurance company seeking intervention in the tort litigation had a clear,

legal interest in the litigation because it would be bound by the judgment in the tort litigation. The insurance company was contractually liable to its insured for the judgment against the uninsured motorist. As the Court stated, "a judgment favorable to the insured fixes the insurer's contractual duty to satisfy that judgment, within policy limits." (Emphasis added) 657 P.2d at 281. Accordingly, the insurer "should have the right to dispute the questions which make it liable on its contract." 657 P.2d at 282 quoting State v. Craig, Mo. App., 364 S.W.2d 343, 347 (1963).

The Lima Court noted that the questions litigated in the action between the insured and the uninsured motorist, liability and damages, were the same issues which determined the insurer's contractual liability to its insured. The insurer, therefore, would be bound by a judgment in the tort litigation.

Appellant here, however, has no legal interest in the contract action in which he seeks to intervene. The issues which will be determined in the declaratory action differ from those in which he has interest. Appellant will not be bound by a judgment in the declaratory action. He will not be precluded from litigating the issues in which he does have a legal interest, those of liability and damages.

Appellant argues that he has an interest in the subject matter of the declaratory action initiated by Safeco because if judgment is rendered in favor of Safeco, "intervenor will be deprived of the opportunity to recover the full amount of his damages."

Appellant's argument could be applied to numerous potential lawsuits in which he could claim an interest because the outcome deprived him of the opportunity to recover the full amount of his damages. It could hardly be maintained, however, that he has a legal interest in these matters so as to permit him to intervene.

As an example to illustrate this point, assume that Rebecca Larsen was employed pursuant to a lucrative employment contract. If her employer suddenly elected to rescind the employment contract, appellant, using the argument advanced here, would claim an interest in the subject matter and a right to intervene in a lawsuit initiated by the employer to rescind the contract. He would argue that the loss of Ms. Larsen's lucrative wages deprived him of the opportunity to recover the full amount of his damages by eliminating the possibility of garnishment of those wages in satisfaction of any judgment which he might obtain.

Appellant does not have a legal interest in the subject matter of the lawsuit between employer and employee so as to allow him to intervene. Similarly, he does not have a legal interest in the contract action between Safeco and Rebecca Larsen.

As previously stated by this Court in Chugg, supra, the "transaction" involved in the declaratory action is one between the insurer and one who may be covered by insurance, "namely their contract." There is "no issue of law or fact in common" between Safeco and Gerald Horton. Gerald Horton has "no present legal interest in the insurance contract" and is therefore not a proper party to the contract action between Safeco and Rebecca Larsen.

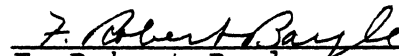
Gerald Horton, lacking privity of contract with Safeco Insurance Company, is not a proper party to a lawsuit, based on the insurance contract, against Safeco.

**CONCLUSION**

The trial court's Order denying the Motion to Intervene was correct and should be affirmed.

Respectfully submitted this 10<sup>th</sup> day of December, 1985.

BAYLE, HANSON, NELSON & CHIPMAN

  
\_\_\_\_\_  
F. Robert Bayle  
Andrea C. Alcabes  
Attorneys for Respondent Safeco  
Insurance Company of America

**CERTIFICATE OF MAILING**

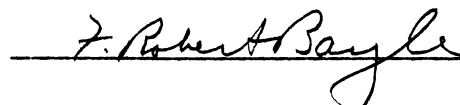
I hereby certify that on this 10<sup>th</sup> day of December, 1985, I mailed four true and correct copies of the foregoing BRIEF OF RESPON-DENT SAFECO INSURANCE COMPANY OF AMERICA, postage prepaid, to each of the following:

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